




DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

SUBJECT DUTY TO WARN AND PROTECT THIRD PARTIES IN RESPONSE TO A THREAT	POLICY NO. 303.01	EFFECTIVE DATE 02/09/2015	PAGE 1 of 6
APPROVED BY:  Director	SUPERSEDES 202.02 06/01/2005	ORIGINAL ISSUE DATE 10/01/1989	DISTRIBUTION LEVEL(S) 1, 2

PURPOSE

- 1.1 To provide direction to the Los Angeles County Department of Mental Health (LACDMH) workforce regarding a psychotherapist's mandated duty to warn and protect any reasonably identifiable victim(s) of a serious threat communicated by a client per Civil Code §43.92. (Authority 1)
- 1.2 To provide direction to the LACDMH workforce regarding assessment, management, and indicated reporting of clients who may pose a threshold risk of harm to others.
- 1.3 To inform Legal Entities and contracted providers of this LACDMH policy and procedures with the expectation that a similar policy and procedures shall be established in their programs.

DEFINITIONS

- 2.1 **Threshold Risk:** An identification of a client's risk of harm to others from a clinical assessment in which a homicidal or other threat has been made and/or threatening behaviors have been identified that appear to pose a serious threat of physical violence and imminent danger to others. The threat is clear, specific, and plausible.
 - 2.1.1 Factors that may influence the identification of a threshold risk include:
 - The presence of homicidal ideation with intent and/or specific plan;
 - The client has taken steps toward carrying out a plan to harm, such as acquiring or practicing with a weapon and/or having the victim under surveillance;



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- The client has current access to firearms and/or a history of violence, such as an aggressive act resulting in injury to others; and/or
- Previous assaults with a weapon. (Reference 1)

2.2 Risk Assessment and Management of a Client's Risk of Harm to Others: A process of the identification of indicators that signify a client is at risk for harming others, providing indicated clinical interventions that may decrease that risk, and reporting a threshold risk as required by policy and/or regulation.

POLICY

- 3.1 Staff shall assess and manage the treatment of clients at risk for danger to others which includes the reporting of a threshold risk.
- 3.2 When the presence of a threshold risk has been determined, LACDMH staff shall take actions to warn and protect reasonably identifiable potential victims of LACDMH clients consistent with applicable law, including provisions of the Civil Code, the Welfare and Institutions Code (WIC), the requirements of the Tarasoff decision, and the 2004 Court of Appeals decisions. (Authority 2)
- 3.3 Each Short-Doyle contractor shall develop a policy relevant to the protection of third parties which is consistent with State law. The policy must include recourse to legal counsel should questions arise as to whether State law creates a duty to warn and protect in a particular case.
- 3.4 With the exception of specific reporting laws such as Child Abuse, Dependent Adult Abuse, and Elder Abuse, staff are not obligated by this policy or existing law to report crimes already committed which are revealed during the course of treatment.

PROCEDURE

- 4.1 A client's risk of harm to others shall be assessed and managed during the initial intake process and when indicated during treatment. (Reference 2)
- 4.1.1 When a threat and/or risk of harming others is present, the risk shall be clinically monitored assessed and documented at each encounter until



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staff assess that the risk has sufficiently dissipated or has escalated to a threshold risk necessitating the actions in Section 4.3.2.5.

4.2 Reporting of a client's threshold risk of harm to others:

4.2.1 When a client, a member of the client's immediate family member, or other credible informant, whether during some initial contact or during the course of service, communicates to any staff that the client has made a serious threat of physical violence against a reasonably identifiable victim or victims, actions pursuant to the Civil Code and Tarasoff decision must be implemented in order to protect the third party. Only the minimum amount of information necessary to protect the intended victim or victims shall be released.

4.2.2 This exception to client confidentiality must be carried out with the maintenance of the public safety and therapeutic relationship as objectives.

4.3 The following steps are applicable to staff when a client, a member of the client's immediate family, or other credible informant communicates to any staff a serious threat of physical violence against a reasonably identifiable victim or victims.

4.3.1 Non-clinical staff must immediately report any such communication to a clinical supervisor (or designee) for action as stated in 4.3.2.5 below.

4.3.2 Clinical staff, bearing in mind the urgency of the danger, shall do the following:

4.3.2.1 Review available past and present history and treatment of the client, and

4.3.2.2 Discuss the information with the clinical supervisor (who shall notify the Program Head or designee of the facility) whether or not the client presents a serious danger to a reasonably identifiable/foreseeable victim or victims.



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4.3.2.3 Should a question remain as to whether the communication made triggers a duty to warn and protect a third party, then the following shall occur:

- A higher level of clinical supervision shall be consulted.
- Should a question still remain, County Counsel shall be consulted through Clinical Risk Management or by an Executive Staff member.

4.3.2.4 If it is decided that the client does not present a serious danger to an identifiable/foreseeable victim or victims, this fact shall be documented including the rationale.

4.3.2.5 If it is decided that the client presents a serious danger (threshold risk of harm) to a reasonably identifiable/foreseeable victim or victims, the following three actions shall be taken:

- **Institute an evaluation for involuntary detention under CA WIC 5150** (Authority 5) if the client can be located. A receiving LPS-designated facility shall be notified by the staff initiating the involuntary detention of the efforts to warn a potential victim. If client cannot be located, notify local law enforcement of the need to locate the client.
 - A higher level supervisor shall be consulted by the evaluator of a client who has exhibited a threshold risk finds that the client does not meet criteria for involuntary detention, necessitating the release of the client.
- **Make reasonable efforts to notify the intended victim or victims** whether or not the client is hospitalized. Involuntary hospitalization of the client does not discharge the duty to warn and protect the victim or victims. Contact may be made through telephone or visitation. Documentation in the client's record is required. It shall include specific efforts to contact the



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potential victim, times and dates of these attempts entered in the progress notes, retaining copies of written correspondence, and contact with family or friends with specific times and names entered in the progress notes.

- **Contact the local law enforcement agency having jurisdiction where the possible victim resides.** Enter in the clinical record, the name of the person to whom the report was made with the date, time, and content released. Involuntary hospitalization of the client does not discharge the duty to warn and protect which includes notifying law enforcement.

4.3.2.6 If the threat involves staff, procedures in accordance with LACDMH Policy No. 109.01, Security/Safety/Threat Management & Violence Prevention, shall also be followed. (Reference 3)

4.3.2.7 Medical information and Protected Health Information may be disclosed in the event of threats related to National Security and Intelligence Activities to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law. (Authority 6)

4.3.2.8 Medical information and Protected Health Information may be disclosed in the event of threats related to the President or Vice-President of the United States or to foreign heads of state for conducting investigations. (Authority 7)

AUTHORITY

1. Section 43.92 of the California Civil Code
2. Tarasoff v. Regents of the University of California (1976) 17 Cal. 3rd 425
3. Ewing v. Goldstein (2004) 120 Cal. App. 4th 807
4. Ewing v. Northridge Hospital (2004) 120 Cal. App. 4th 1289
5. CA Welfare and Institutions Code § 5150
6. The National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).



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7. The Threat Statute US Code Title 18, Part 1, Chapter 41, Sec. 871

REFERENCES

1. [Guidelines for Sequential Screening of Risk for Violence, New York State Office for Mental Health](#)
2. [LACDMH 2.5 PARAMETERS FOR ASSESSMENT AND MANAGEMENT OF CLIENTS AT RISK OF DANGER TO OTHERS Revised July 2014](#)
3. [LACDMH Policy No. 109.01, Security/Safety/Threat Management & Violence Prevention](#)
4. [LACDMH ILLNESS AND INJURY PREVENTION PROGRAM \(IIPP\) Pg. 61](#)

RESPONSIBLE PARTY

LACDMH Office of the Medical Director